FRED WILKINSON
d.b.a. MILLER CREEK MINING CO.

IBLA 91-67 Decided February 28, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, affirming issuance of a notice of noncompliance with respect to operations on an unpatented mining claim. F-63490/SM.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Plan of Operations--Mining Claims: Plan of Operations

   Pursuant to 43 CFR 3809.2-2, a notice of noncompliance properly issues upon a determination that a mining claimant and operator has failed to operate in such a manner as to prevent undue or unnecessary degradation of the public lands.

APPEARANCES: Fred Wilkinson, Fairbanks, Alaska, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Fred Wilkinson, d.b.a. as Miller Creek Mining Company, has appealed from an October 18, 1990, decision of the Director, Alaska State Office, Bureau of Land Management (BLM), affirming the issuance by the District Manager, Steese/White Mountains District, of a notice of noncompliance with respect to operations on the No. 6 Ketchum Creek unpatented placer mining claim (F-63490/SM) located in sec. 30, T. 8 N., R. 12 E., Fairbanks Meridian, Ketchum Creek, Alaska, for failure to comply with the regulations at 43 CFR 3809.2-2 and 3-2(b)(2).

On July 23, 1990, the Ketchum Creek mining claim was inspected by a compliance examiner from the Steese/White Mountain District Office to determine whether the operation was in compliance with the mine plan of operations approved on August 8, 1989. The compliance examiner determined that the mining operation was in noncompliance because undirected or unchanneled discharge was occurring from the "settling zone" which caused downstream erosion of vegetative and organic materials, soils, and overburden from the bench area adjacent to the mining operation. As a result of the examination, a notice of noncompliance was issued. The notice provided the mine operator with two options for corrective action. In a follow-up examination conducted on the Ketchum Creek mining claim on July 31, 1990, the compliance examiner determined that corrective action had been taken and terminated the notice of noncompliance.

In his statement of reasons on appeal, appellant does not deny that his mining operation was causing downstream erosion of vegetation and materials. However, he contends that the vegetation which was eroded was a negligible amount (2-1/4 yards), did not constitute debris, and had no value in reclaiming the disturbed area. He further asserts that the material being eroded was nonauriferous gravel with no organic content.

[1] In managing the public lands, the Secretary of the Interior is mandated by law to "take any action necessary to prevent unnecessary or undue degradation of the lands." Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1988); see Draco Mines Inc., 75 IBLA 278 (1983). This provision was expressly recognized in section 302(b) of FLPMA as affecting the rights of claimants under the Mining Law of 1872. The surface management regulations of 43 CFR Subpart 3809 were promulgated pursuant to this authority. Differential Energy, Inc., 99 IBLA 225 (1987).

In monitoring the activities involved in appellant's mining operations, BLM has properly acted in this situation to carry out the Secretary's mandate as indicated in the law and the surface management regulations to prevent unnecessary or undue degradation of this area of public land. BLM's actions to this point can only be viewed as a necessary and proper effort to carefully follow the express objectives of the regulations set forth in 43 CFR 3809.0-2 as follows:

> The objectives of this regulation are to:
>
> (a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining law in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the Federal lands;
>
> (b) Provide for reclamation of disturbed areas; and
>
> (c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

Moreover, where the evidence is such, as in this case, that the operator has failed to prevent undue or unnecessary degradation, BLM properly may issue a notice of noncompliance as described in 43 CFR 3809.3-2.

The burden of proof is on an appellant to show error in the decision appealed from; in the absence of such a showing, the decision will be affirmed. B. K. Lowndes, 113 IBLA 321 (1990); Wells J. Horvereid, 88 IBLA 345 (1985). Where, as in the present case, a party appeals from a BLM determination affirming a notice of noncompliance under 43 CFR

3809.3-2, it is the obligation of the appellant to show that the determination is incorrect. Unless a statement of reasons shows adequate basis
for appeal and appellant's allegations are supported with evidence showing error, the appeal cannot be afforded favorable consideration. Howard J. Hunt, 80 IBLA 396 (1984). When BLM determines that the surface disturbance caused by appellant's mining operation had caused unnecessary or undue degradation of the lands, and appellant challenges that determination, the burden is on appellant to show that the situation does not exist.

The record contains evidence offered by BLM, including photographs, which confirms the existence of erosion and vegetative damage. As noted previously, appellant has admitted that erosion did occur on the mining site but disagrees that this constitutes unnecessary or undue degradation. While appellant's opinion as to the nature and extent of the problem is not wholly unreasonable, it represents only another view of the situation. As noted above, the burden is on appellant, as the party challenging BLM's decision, to support its allegations with evidence showing error. Conclusory allegations of error or differences of opinion, standing alone, do
not suffice. Southern Utah Wilderness Alliance, 128 IBLA 382, 390 (1994).
The Department is entitled to rely on the reasoned analysis of its experts in the field in matters within their realm of expertise. King's Meadows Ranches, 126 IBLA 339, 342 (1993), and cases there cited.

Accordingly, since appellant has failed to meet his burden of proof, and the administrative record supports BLM's determination, the decision
to affirm the notice of noncompliance must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
James L. Byrnes
Chief Administrative Judge

I concur:

_____
R. W. Mullen
Administrative Judge